

ESTATE OF FRANK (FRANCIS) KEAHTIGH

IBIA 81-27

Decided March 9, 1982

Appeal from order by Administrative Law Judge William E. Hammett approving testamentary disposition of Indian trust estate.

Affirmed.

1. Indian Probate: State Law: Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

APPEARANCES: E. Elaine Schuster, Esq., for appellant Horace Tahbone.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On August 4, 1979, decedent Frank Keahtigh, the beneficial owner of Indian trust property, died testate at Oklahoma City, Oklahoma, at the age of 77 years. His will, executed on April 22, 1970, left his entire estate to three daughters and two grandsons. Appellant appeared personally and through counsel at the probate hearing conducted by the Department in the matter of decedent's trust estate, claiming to be the illegitimate son of decedent. Evidence of paternity was received at the hearing, where appellant, through counsel, presented a claim that, based upon Oklahoma law, he was entitled to share as a surviving son in decedent's estate, notwithstanding he was omitted as an heir from decedent's will, which was otherwise valid. The same issue is raised on appeal, the Administrative Law Judge having ruled that approval of a valid Indian will made unnecessary any further findings concerning heirship in this case. His ruling was correct for reasons stated below.

Appellant argues, as he did before the Administrative Law Judge, that principles of equity should operate to compel the Department to apply State law in this case, which would thus permit appellant to share in the estate of his parent who disinherited him by omitting him without mention from his will. Appellant points out that in an earlier probate proceeding before the Department involving his maternal grandfather's estate he was found not

to be an heir of his grandfather because of the existence of an Oklahoma statute which prevented illegitimates from representing either parent for purposes of determining inheritance. The statute, appellant states in his brief, has now been amended to permit such representation. The record does not show, and appellant does not state, whether the grandfather died testate or intestate. From this circumstance, and the holding below, appellant rationalizes the rejection of his claim in this estate to be an example of inconsistent application of the law by the Department. His reasoning is, however, flawed.

[1] Assuming, without so deciding, that decedent is the natural son of decedent, it is correct that determination of Indian heirs in cases of intestate succession must, by Federal statute, be made in accordance with state law. See 25 U.S.C. §§ 348, 372-373 (1976). Malena B. Long, 8 IBIA 115 (1980). The case appellant brings before the Board, however, involves a will. Tooahnippah v. Hickel, 397 U.S. 598 (1970), a case cited by appellant, establishes that an Indian will, executed in conformity to Departmental regulations, is valid absent a showing of the imposition of the will of another upon the testator, or proof of his incompetence. The will appearing in the record is established to be such a will. Under these circumstances state laws respecting inheritance have no application, and findings concerning heirship are unnecessary for the reasons outlined in detail in Estate of Rena Marie Edge, 7 IBIA 53 (1978), a copy of which was incorporated by reference in the Administrative Law Judge's order denying petition for rehearing. Indian probate is an area preempted by Federal law; state law does not control Indian probate proceedings. Estate of Green, 3 IBIA 110, 81 I.D. 556 (1974).

Since this appeal is decided upon the legal question presented by appellant, the Board does not reach appellant's contentions concerning paternity, and no finding is made upon his offered proof in that regard. Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order approving will and directing distribution of decedent's trust estate is affirmed.

This decision is final for the Department.

---

Franklin D. Arness  
Administrative Judge

We concur:

---

Wm. Philip Horton  
Chief Administrative Judge

---

Jerry Muskrat  
Administrative Judge